

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

U.S. BANK TRUST, N.A.,)
AS TRUSTEE FOR LSF9 MASTER)
PARTICIPATION TRUST,)

Plaintiff,)

v.)

1:19-cv-00242-JAW

EVELYN E. WITHAM and)
IRY T. WITHAM,)

Defendants,)

ANSON STREET, LLC,)

Party-In-Interest.)

**ORDER ON PLAINTIFF'S MOTIONS FOR JUDGMENT AND DEFAULT
JUDGMENT**

On May 29, 2019, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, (U.S. Bank) filed a foreclosure complaint against Evelyn E. Witham and Iry T. Witham and named Anson Street, LLC as a Party-In-Interest. *Compl.* (ECF No. 1). U.S. Bank served Mr. and Ms. Witham on June 15, 2019, and filed proof of service on June 20, 2019. *Proof of Service as to Evelyn Witham* (ECF No. 5); *Proof of Service as to Iry Witham* (ECF No. 6). U.S. Bank served Anson Street, LLC on June 10, 2019, and filed proof of service on July 1, 2019. *Proof of Service as to Anson Street, LLC* (ECF No. 7).

On August 6, 2019, U.S. Bank moved for the entry of default against Anson Street, LLC, *Pl.'s Mot. for Entry of Default as to Party-In-Interest, Anson Street, LLC* (ECF No. 8), and the Clerk entered default against Anson Street, LLC the same day.

Order Granting Mot. for Entry of Default (ECF No. 9). Also on August 6, 2019, U.S. Bank filed a motion for judgment, attaching a “Consent Judgment of Foreclosure and Sale” between U.S. Bank and Mr. and Ms. Witham. *Mot. for J.* (ECF No. 10); *id.*, Attach. 1 (*Consent J.*). On September 10, 2019, U.S. Bank filed a motion for default judgment as to Anson Street, LLC, *Pl.’s Mot. for Default J. as to Party-In-Interest, Anson Street, LLC* (ECF No. 11) (*Pl.’s Mot. for Default J.*), along with an affidavit in support, *id.*, Attach. 1, *Aff. Of Lisa M. Higgins in Supp. of Pl.’s Mot. for Default J. as to Anson Street, LLC*, and an amended consent judgment. *Id.*, Attach. 2, *Am. Consent J. of Foreclosure and Sale* (*Am. Consent J.*)

The Court finds that Anson Street LLC is a properly defaulted party and grants default judgment against it. The Court also reviewed the agreement between the non-defaulted parties that a consent judgment should be entered and finds that the proposed Amended Consent Judgment presents a reasonable resolution to this action. However, the Court notes that the proposed Amended Consent Judgment suggests that it will result in dismissal of the following counts: “Count II—Breach of Note, Count III—Breach of Contract, Money Had and Received, Count IV—Quantum Meruit, and Count V—Unjust Enrichment . . .” *Am. Consent J.* at 1. The Court has been unable to locate these counts in U.S. Bank’s Complaint. *See Compl.* ¶¶ 24-51 (listing only two counts, for foreclosure and equitable mortgage). Therefore, the Court orders that U.S. Bank file an amended motion for judgment attaching a second amended consent judgment reflecting the correct allegations in its Complaint by November 6, 2019.

The Court GRANTS U.S. Bank's Motion for Default Judgment as to Party-in-Interest Anson Street, LLC (ECF No. 11) and RESERVES RULING on its Motion for Judgment (ECF No. 10) pending filing of an amended motion for judgment by November 6, 2019.

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 23rd day of October, 2019